***United States Court of Appeals***

***for the Second Circuit***


# APPELLANT'S BRIEF

ORIGINAL

75-1116

75-1116

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P/S

UNITED STATES COURT OF APPEALS

For the Second Circuit

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UNITED STATES OF AMERICA,

Appellee,

- against -

MICHOEL ZILBERBERG,

Defendant-Appellant.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

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# BRIEF ON BEHALF OF APPELLANT

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## TABLE OF CONTENTS


| | | Page |
|---|---|---|
| TABLE OF AUTHORITIES | | 2 |
| STATUTES INVOLVED | | 3 |
| PRELIMINARY STATEMENT | | 4 |
| STATEMENT OF FACTS | | 6 |
| ARGUMENT: | | |
| POINT I: | THE COURT IMPROPERLY AMENDED THE INDICTMENT HEREIN. | 12 |
| POINT II: | THE CONDUCT OF THE PROSECUTOR SEVERELY PREJUDICED THE DEFENDANT'S RIGHT TO A FAIR TRIAL. | 16 |
| POINT III: | THE COURT FAILED TO CHARGE THAT THE REQUISITE FRAUDULENT INTENT HAD TO EXIST AT THE TIME OF THE MAILINGS. | 20 |
| POINT IV: | THE GOVERNMENT FAILED TO SUSTAIN ITS BURDEN OF PROOF. | 22 |
| CONCLUSION | | 25 |

## TABLE OF AUTHORITIES


| CASES | PAGE |
|---|---|
| Ex Parte Bain, 212 U.S. 1, 7 S.Ct. 781 (1887) | 13 |
| Ciravolo v. United States, 384 F.2d 54 (1st CCA; 1967) | 18 |
| Heisler v. United States, 394 F.2d 692 (9th Cir., 1968) | 15 |
| Loman v. United States, 243 F.2d 327 (8th Cir., 1957) | 22 |
| Russell v. United States, 369 U.S. 749, 82 S.Ct. 1038 (1962) | 14 |
| United States v. Caine, 441 F.2d 454 (2nd Cir., 1971) | 22 |
| United States v. Green, 494 F.2d 820 (5th Cir., 1974) | 21 |
| United States v. Maze, 414 U.S. 395, 94 S.Ct. 645 (1974) | 21 |

OTHER SOURCES

| | |
|---|---|
| American Bar Association, Code of Professional Responsibility, Canon 7 (13) | 18 |
| Corpus Juris Secundum, Vol. 22 | 18 |

## STATUTES INVOLVED

18 U.S.C. 1341, Frauds and Swindles

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

18 U.S.C. 1342, Fictitious Name or Address

"Whoever, for the purpose of conducting, promoting, or carrying on by means of the Postal Service, any scheme or device mentioned in section 1341 of this title or any other unlawful business, uses or assumes, or requests to be addressed by, any fictitious, false, or assumed title, name, or address or name other than his own proper name, or takes or receives from any post office or authorized depository of mail matter, any letter, postal card, package, or other mail matter addressed to any such fictitious, false or assumed title, name, or address, or name other than his own proper name, shall be fined not more than $10000 or imprisoned not more than five years, or both."

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | : | |
| Appellee, | : | DOCKET NO. 75-1116 |
| - against - | : | |
| MICHOEL ZILBERBERG, | : | |
| Defendant-Appellant. | : | |

## BRIEF ON BEHALF OF APPELLANT

### PRELIMINARY STATEMENT

The appellant, MICHOEL ZILBERBERG, appeals from a judgment of the United States District Court for the Eastern District of New York (Neaher, J.) rendered after a jury trial on March 14, 1975, convicting him of seven counts of mail fraud and seven counts of using a fictitious name for the purpose of conducting a mail fraud.

The appellant, MICHOEL ZILBERBERG, was sentenced to one year in prison on the seven counts of using a fictitious name for the purpose of conducting a mail fraud, and three years probation on each of the seven counts of mail fraud to run concurrently and consecutive to the sentence imposed on the former counts.

This action was tried to a jury from January 7, 1975 to January 9, 1975, and a notice of appeal was filed on March 14, 1975. The execution of sentence has been stayed pending appeal and the appellant is free on a personal recognizance bond.

## STATEMENT OF FACTS

This case involved a twenty-six count indictment which essentially charged the defendant with applying for credit cards from various banks, airlines, oil companies and credit card companies through the mails by means of false and fraudulent applications.

Prior to trial, twelve of the counts of the indictment were dismissed by the Court (2a).*

The Government contended that the defendant received seven credit cards under a false name and used these cards without any present intention of paying for goods or services received.

It was alleged in paragraph "3" of the indictment that the defendant rented a post office box under the name of "Charles Ross" as part of the aforesaid scheme to defraud, and used the box to receive the seven credit cards (4a).

The indictment alleged that this scheme to defraud commenced on approximately April 1, 1971 and continued to December 1, 1972. It was clearly set forth in paragraph "4" of the indictment that all the credit cards were received in 1971.

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* Numbers in parenthesis followed by "a" refer to pages of Appendix.

The Government opened its case with the testimony of VINCENT EDWARD SCAMANDELLA, a Postal Service employee, who was in charge of post office boxes at a certain post office. Mr. Scamandella testified to helping a Charles Ross open a post office box on April 27, 1972 (13-14).**

The second witness for the Government was RUSSELL JOSEPH CASSARINO, also a Postal Service employee. Mr. Cassarino testified to a conversation in February 1972, and to completing various application forms in April 1972 (24; 43-44).

Defense counsel objected to any evidence being introduced concerning the securing of a post office box in 1972 to receive the credit cards since it was alleged in the indictment that the cards were received in 1971 (25; 46).

The trial court recognized the problem in regard to admitting this evidence of events in 1972 since the indictment alleged that all the credit cards involved were received in 1971. The Government conceded the impropriety of the indictment and that paragraph "3" should never have been included in the indictment, (46-47; 63). The defense counsel contended that an elimination of paragraph "3" would constitute an impermissible amendment of the Grand Jury indictment and also a

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** Numbers in parenthesis refer to culminative and consecutive pagination of the trial transcript commencing with first day of trial, January 7, 1975, second day, January 8, 1975, and the last day, January 9, 1975, which transcript is contained in three separate volumes each also with its own non-culminative and non-consecutive pagination.

violation of the defendant's constitutional rights, (65; 225; 235; 236; 237).

The next witness for the Government was VICTOR GABAY, who was a credit and collection specialist employed by American Airlines (48). Mr. Gabay testified to receiving an application for a credit card in the mail from Charles Ross and subsequently mailing a credit card to Mr. Ross at the address shown on the application, (50-51). Through this witness, evidence was introduced of various purchases made by the cardholder, charges being incurred and a balance existing in the account of $1,282.16 (55-56).

The next five witnesses for the Government, ALAN GOCHAL, ROBERT HOWARD WAGNER, MICHAEL R. NAUMOWICH, WILLIAM RESIESICE and THOMAS DOOLEY, were all employees of various firms whose duties did concern credit card operations.

All five witnesses received by mail applications for credit cards from a Charles Ross, and four testified to credit cards being sent by mail to the applicant. The fifth, THOMAS DOOLEY, testified that the credit cards were not sent out to the applicant by mail (132).

All five witnesses testified that debits for goods and services in various amounts were charged to these accounts. Only one witness, ALAN GOCHAL, an employee of Chevron Oil testified that no payments were made (72). The other four witnesses testified to receiving some amounts in payment of these accounts.

The credit card applicant, when applying to the Chevron Oil Company, used the Chelsea National Bank for a bank reference (74). Two payments were made by Charles Ross to Diners' Club by checks drawn on the Chelsea National Bank (89).

The next witnesses for the Government, ANTHONY J. RUSSO and RICHARD TOWN, were employees of Bankers Trust and Getty Oil respectively. Each testified to receiving an application for a credit card by mail and sending out a credit card to a Charles Ross by mail (211, 215, 255).

The testimony of Mr. RUSSO did not indicate that any charges were made to that particular account. Mr. TOWN testified that charges were made to the Getty Oil account (258), and that at least three checks were received in payment, the third of which was drawn on the Chelsea National Bank by Charles Ross (264).

None of the exhibits, Government Exhibits Nos. 31, 32, 33 and 34, introduced into evidence through the witnesses ANTHONY J. RUSSO and RICHARD TOWN were connected to the handwriting exemplars given by the defendant. The Government witness, THOMAS DONOVAN, who testified as a handwriting expert, did not testify that Government Exhibits Nos. 31 through 34 were written by the same man, the defendant, whose handwriting exemplars were taken. There was no evidence connecting these exhibits to the defendant.

The final witness called by the Government, BARRY ASH, was an employee of a Pennsylvania bank (270). Prior to Mr. ASH taking the stand, a discussion was held outside the presence of the jury concerning the prospective testimony of Mr. ASH.

The trial court stated that it would allow the testimony of Mr. ASH only for the limited purposes of ",..the identification of Charles Ross, the principal of the bank accounts in Mr. ASH's band, and the presentation to ASH of a check drawn on the Chelsea National Bank account..." (250).

Defense counsel objected to the testimony of this witness since the purpose of his testimony had been accomplished through other evidence submitted during the trial up to that point (251).

The prosecutor represented to the Court that in the interest of "...not arousing any undue prejudicial material..." he instructed the witness ASH not to mention the fact that the defendant was arrested as a result of the dishonored check he had given the witness (249).

On redirect, the prosecutor violated the side-bar agreement and an order of the Court by introducing testimony of an incomplete and aborted criminal proceeding (288).

Defense counsel made a motion for a mistrial which the Court denied (288).

The Court admonished the prosecutor for the flagrant violation of the representations made during the side-bar conference (288; 290-291);

The case was given to the jury which returned a verdict of guilty on fourteen counts of the indictment.

## POINT I

## THE TRIAL COURT IMPROPERLY AMENDED THE INDICTMENT HEREIN

The indictment filed in the case before the Court contained the following paragraph:

> "...3. It was further a part of the said scheme and artifice to defraud that the defendant MICHOEL ZILBERBERG rented a Post Office Box under the name "Charles Ross" for the purpose of receiving and causing to be delivered by the Post Office Department or United States Postal Service the aforementioned credit cards for his own personal use..."
> (EMPHASIS SUPPLIED)

It was established during the trial that the aforesaid post office box referred to in paragraph "3" of the indictment was opened in April 1972. However, the credit cards were received as alleged in the indictment and established by the evidence at trial in the year 1971 (46-48). Consequently, the post office box could not have been opened to receive the credit cards as alleged in the indictment.

The prosecutor admitted that paragraph "3" of the indictment was an error (63).

The trial court, over the objection of the defense, permitted the amendment of the indictment contrary to the defendant's constitutional rights.

It is undeniable that the grand jury in its indictment made a finding based upon facts that were clearly and admittedly erroneous.

The issue presented is whether an indictment can be amended by the Court after it has been found and presented by a grand jury?

This issue was considered in the landmark case of Ex Parte Bain, 212 U.S. 1, 7 S.Ct. 781 (1887), in which case the trial court had stricken out as surplusage, which it appears to have been, the words in the indictment, "comptroller of the currency and..." In its opinion, the Supreme Court referred to the remarks of the Circuit Court which held that the words were surplusage, were not material to the indictment, that no injury was done to the defendant by allowing the change to be made, and that the grand jury probably would have found the indictment without this language.

Mr. Justice Miller in writing the opinion in Ex Parte Bain, supra, held that it is not for the trial court to decide whether or not a grand jury would have voted an indictment and further held on page 786:

> "... The party can only be tried upon the indictment as found by such grand jury, and especially upon all its language found in the charging part of that instrument...How can the court say that there may not have been more than one of the jurors who found this indictment who was satisfied that the false report was made to deceive the comptroller, but was not convinced that it was made to deceive anybody else? And how can it be said that, with these words stricken out, it is the indictment which was found by the grand jury? If it lies within the province of a court to change the charging part of an indictment to suit its own notions of what it

> ought to have been, or what the grand jury would probably have made it if their attention had been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a prisoner's trial for a crime, and without which the constitution says 'no person shall be held to answer', may be frittered away until its value is almost destroyed..."

In a later case, Russell v. United States, 369 US 749, 82 S.Ct. 1038 (1962), the Court dealt with the failure of the indictment to identify the subject matter of the inquiry before a congressional sub-committee at the time the witness was interrogated. The witnesses were merely indicted for refusing to answer questions "pertinent to the inquiry", but the indictment omitted any facts indicating the nature of the inquiry.

It appears in Russell v. United States, supra, that the Court was convinced that the omission from the indictment of the subject matter of the inquiry indicated that perhaps the grand jury never considered such facts. The Court held that the omission of facts from the indictment not only endangers the defendant's right to be apprised of what he must be prepared to defend, but also allows the Court or the prosecutor to circumvent the basic protection which the intervention of the grand jury was to afford a person accused of crime. Mr. Justice Stewart expressed this thought by stating on page 770:

> "...To allow the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to the grand jury which indicted him..." (EMPHASIS SUPPLIED)

Furthermore, in Heisler v. United States, 394 F.2d 692 (9th Cir., 1968), it was stated that:

> "Ever since the decision in Ex Parte Bain, 1887, 121 U.S. 1, 7 S.Ct. 781, 30 L.Ed. 849, it has been the rule that any substantial amendment to the body of an indictment renders the conviction void. The reason is that the defendant is not tried on the indictment of the Grand Jury, as is his constitutional right under the Fifth Amendment, but on a different charge, and there is no way of knowing whether the Grand Jury would have returned the amended indictment if given the opportunity. Therefore, an indictment cannot be amended in any substantial way, even with the defendant's consent."

In the instant case before the Court, there was an omission of fact from the indictment, namely, the date when the post office box was opened, and also a material misstatement of fact, namely that the post office box was opened to receive the credit cards.

Neither this Court nor any other court can know what the grand jury would have been willing to charge had they known the true and complete facts.

## POINT II

## THE CONDUCT OF THE PROSECUTOR SEVERELY PREJUDICED THE DEFENDANT'S RIGHT TO A FAIR TRIAL.

Prior to the Government calling to the stand the witness BARRY ASH, a side-bar conference was held during which the defense counsel stated his belief that the testimony of the witness would be prejudicial in nature. The prosecutor then outlined to the Court the testimony he would elicit from the witness. It was clearly understood that the Court would only allow the testimony of the witness into evidence as limited in the outline set forth by the prosecutor.

The following exchange clearly established the above:

> "MR. KIMELMAN: (Prosecutor) Getty Oil Company. The second witness is an individual who is a banker from Pennsylvania who has dealt with the defendant under the name of Charles Ross and only knew the defendant under the name of Charles Ross during the period of time alleged in the indictment, during the year 1972; and that this banker has several bank accounts with the defendant under the name of Charles Ross. He will identify in court, and in-court identification, that this is the man he knows as Charles Ross. He will also testify that checks were given to his bank under the name of Charles Ross that bounced and that were uncollectable and that legal action had to be taken against Charles Ross for these checks that were no good..." (246)
>
> "MR. KIMELMAN: ...and as a result of that the bank was forced to take legal action against the defendant to collect the monies owed to them. We feel this is perfectly proper and not unduly pre-

judicial. I've instructed the witness not to mention anything about the defendant's arrest because he was arrested pursuant to a warrant in Pennsylvania, brought before a magistrate in Pennsylvania and at the magistrate's hearing the defendant paid off the bad debt in cash and the criminal charges were dropped at that time.

In my preparation of the witness, I've instructed him to merely say that legal action, criminal and civil, were instituted and eventually the debt was paid in cash by the defendant. There will be no mention that any arrest was ever effectuated, clearly in the interest of arousing any undue prejudicial material..." (249)

"THE COURT: Well, I think in the interest of avoiding undue prejudice here, I would not allow anything more than the identification of this defendant as Charles Ross, the principal of three accounts, and the presentation of a check to the bank drawn on the Chelsea account.

MR. KIMELMAN: Take it one step further --

THE COURT: Plus the fact that the check was not paid.

MR. KIMELMAN: That would be satisfactory to the Government.

THE COURT: That's as far as I'll go." (250)

(EMPHASIS SUPPLIED)

In violation of that agreement, the prosecutor on re-direct specifically and clearly made a reference to a criminal proceeding in framing his own question by stating on page 288 of the trial transcript, "...Q: Was this a criminal proceeding?"

This conduct of the prosecutor was in direct violation of the agreement and order of the Court during the sidebar conference.

The standard of conduct of a prosecutor has been recognized to be even higher than that of an ordinary advocate

because he occupies the dual role of an adversary and a representative of the Government. Ideally, the blending of both duties should result in impartial justice.

The American Bar Association's Code of Professional Responsibility, Canon 7 (13), expresses the duty of a prosecutor as follows:

> "The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the public prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the public prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts..."

It is axiomatic that a prosecutor should not make any reference to a criminal proceeding if such a reference in any manner reflects on the character of the accused. Generally, evidence that an accused at a prior time was arrested, indicted or convicted of an offense is inadmissible. (22 CJS 676)

It was held in Ciravolo v. United States, 384 F.2d 54, (1st CCA; 1967), that if a defendant testifies and on cross-examination the prosecutor inquires as to a prior conviction without having a certified copy of the conviction, then such conduct is prejudicial. The Court in Ciravolo v. United States, supra, stated on page 55:

> "...that to ask a defendant whether he has had criminal convictions, without possessing a certified copy of the record, is fraught with possibilities of error beyond those that occurred here. We would be slow to find that any such error was not prejudicial..."

In the case before the Court, the offense was most grievous since in reality, no criminal proceeding was ever pending against the defendant. Thus, the question framed by the prosecutor was completely without foundation in fact and he was well aware of it.

Additionally, the prosecutor by framing a question referring to a criminal proceeding deliberately violated the earlier side-bar agreement. This misconduct on the part of the prosecutor greatly troubled the trial court which expressed its dismay and concern over the effect of such misconduct.

The unwarranted, purposeless, and baseless remarks of the prosecutor in the presence of the jury severely prejudiced the defendant, and in itself is a sufficient ground for the reversal of this conviction.

## POINT III

### THE COURT FAILED TO CHARGE THAT THE REQUISITE FRAUDULENT INTENT HAD TO EXIST AT THE TIME OF MAILING.

The indictment herein charges the defendant with multiple violations of the mail fraud statute, Title 18 U.S.C., Section 1341. The gravamen of the crime defined in this statute is that the defendant with the "intent" to deceive another used the mails to execute or carry out that scheme or artifice.

The trial court's charge on the question of intent was exceedingly inadequate and constituted a failure to charge a substantive element of the crime.

On the question of intent, the Court charged on pages 344 and 347 as follows:

> "The term 'defraud' is also used in its ordinary sense, that is, deceit or trickery with intention to gain some dishonest advantage. The terms 'fraudulent representations or promises mean the making of statements, whether oral or written, which are false in fact and known to be such."
>
> "... Third, that the act of using the United States mails was done wilfully and with the specific intent to carry out some essential system in the execution of the said scheme or artifice to defraud or attempt to do so..."
>
> "A man's intent is purely a matter of mind. No one has everybeen able to photograph it. How then are you going to judge intent in this case? Medical science has not yet devised an instrument whereby we can go back to the time of the occurrence of events and determine what then was a person's intent or knowledge."

The charge was defective in that it did not adequately and clearly, under the special facts as adduced at trial, delineate the essential elements of the crime. In the instant case, the burden of the Government is twofold, namely, it must prove the acts underlying the indictment and also prove the elements necessary to establish federal jurisdiction.

In United States v. Maze, 414 U.S. 395, 94 S.Ct. 645 (1974), the Supreme Court stated that the fraudulent use of the mail must be "executory" to the mailing. Essentially, the Government must prove and the trial court must clearly charge that the defendant possessed a specific intent to defraud prior to using the facilities of the Postal Service.

In United States v. Green, 494 F.2d 820, 823 (1974), the Fifth Circuit held:

> "The purpose of the mail fraud statute, section 1341, is to prevent the post office from being used to carry (schemes to defraud) into effect...The two basic elements of a mail fraud offense are (1) the scheme to defraud, and (2) causing a mailing for the purpose of executing the Scheme." (EMPHASIS SUPPLIED)

The trial court's charge was vague and insufficient. It did not stress that the jury, in order to find a violation of Title 18, U.S.C., Section 1341, must accept as proven the fact that at the time of the very first mailing, the defendant had a specific intent to defraud and used the mails to execute that intent.

Clearly, the charge allowed the jury to find such a violation if they found that the defendant, subsequent to utilizing the mails, decided not to pay the charges. Such a finding would be contrary to United States v. Maze, supra, and an incursion on state law.

It has been held in those cases dealing with the interstate transportation of stolen properties or moneys taken by fraud, that it is the Government's burden to prove beyond a reasonable doubt that the intent to defraud existed prior to the use of the instrumentation or means of interstate commerce. (Loman v. United States, 243 F.2d 327 (8CCA, 1957); United States v. Caine, 441 F.2d 454 (2 CCA, 1971))

In the examples cited above, the crimes must be formulated prior to the use of interstate facilities. In the instant case, the specific intent to defraud must exist prior to the use of the mails and the mails must be the means to execute that previously conceived intent to defraud. The trial court did not instruct the jury as to this essential element.

## POINT IV

## THE GOVERNMENT FAILED TO SUSTAIN ITS BURDEN OF PROOF.

The Government called to the stand a FRANCIS HANGARTER, who is employed by the Postal Service as an inspector. Mr. HANGARTER testified that on December 4, 1973, he obtained handwriting exemplars from the defendant (176, 181).

THOMAS DONOVAN, a document analyst with the Postal Service, was called to the stand by the Government. He testified that he compared the handwriting exemplars taken from the defendant to some of the exhibits in evidence up to that point. Mr. DONOVAN's opinion was that these exhibits were written by the same man who wrote the handwriting exemplars, namely the defendant (200).

The exhibits in evidence that Mr. DONOVAN allegedly examined and testified concerning were Government's Exhibits Nos. 1, 2, 4, 6, 9, 17, 19, 24, 27 and 28.

Subsequent to Mr. DONOVAN's testimony, a Mr. ANTHONY RUSSO, an employee of Bankers Trust, testified for the Government as to an application being received by his firm from a Charles Ross. This application was marked in evidence as Government Exhibit No. 31. Further, Mr. RUSSO testified to receiving a verification of employment letter concerning Mr. Ross from a man named Al Gordon. This letter was marked into evidence as Government Exhibit No. 32.

The next witness called to the stand by the Government was RICHARD G. TOWN who was a credit card supervisor with the Getty Oil Company (253). Mr. TOWN testified to receiving a credit card application from a Charles Ross and sending the applicant a credit card (254-255). Mr. TOWN also testified that his firm received a verification of employment letter from a man named Al Gordon (257). The aforesaid credit application was marked into evidence as Government Exhibit No. 33, and the verification of employment letter was marked into evidence as Government Exhibit No. 34.

Further, Mr. TOWN testified that various amounts were charged to the account and that a balance remains unpaid although some payments were received by his firm (258).

Government Exhibits Nos. 32, 32, 33 and 34 were not examined by Mr. DONOVAN, the Government's expert, since they were introduced in the trial for the very first time subsequent to his testimony. Hence, there was no evidence introduced connecting the defendant to these exhibits.

It was never proven by the Government that the defendant was the author, writer or person responsible for the composition of Government Exhibits Nos. 31, 32, 33 and 34. In regard to these exhibits, the question remains that perhaps some person other than the defendant could have written these exhibits utilizing the names Charles Ross and Al Gordon.

It was extremely harmful to the defendant's right to a fair and impartial trial to have such prejudicial evidence admitted without establishing any connection to him.

## CONCLUSION

The Judgment appealed from should be reversed and the indictment herein dismissed.

Respectfully, submitted,

JOHN J. MEGLIO, ESQ.

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A 201 Affidavit of Service by Mail G LUTZ APPELLATE PRINTERS, INC.

**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

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|---|---|
| **UNITED STATES OF AMERICA,** **Appellee,** *against* **MICHAEL ZILBERBERG,** **Appellant.** | *Index No.* *Affidavit of Service by Mail* |

STATE OF NEW YORK, COUNTY OF **New York** ss.:

**Eugene L. St. Louis** *being duly sworn,*

*deposes and says that deponent is not a party to the action, is over 18 years of age and resides at*

**~~X~~ 1235 Plane St., Union, N.J. 07083**

*That upon the* **28th** *day of* **April** 19 **75**, *deponent served the annexed* Briefs

*upon* **David G. Trager** *attorney(s) for*

**Appellee** *in this action, at* **225 Cadman Plaza, Brooklyn, N.Y.**

*the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.*

*Sworn to before me, this* **28th**
*day of* **April** 19 **75**

Eugene L. St. Louis

Print name beneath signature

**Eugene L. St. Louis**

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01 - 0410950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975